



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**940 SECOND APPEAL NO. 149 OF 2024
WITH
CIVIL APPLICATION NO. 6350 OF 2024
IN SA/149/2024
WITH
CIVIL APPLICATION NO. 6349 OF 2024
IN SA/149/2024**

1. Ahmed Abdul Majid S/o M.A.
Rasheed Age : 52 Years, Occ. Service
 2. Abdul Fahim Abdul Rasheed,
Age : 35 Years, Occ. Business
 3. Mohammed Aleemoddin S/o Abdul
Rasheed, Age : 37 Years, Occ. Business
 4. Vaseema Tabassum w/o Md. Sami-Ur-Rahman,
Age : 44 Years, Occ. Service
 5. Firasat Tabasuum d/o Syiad Aafaq
All R/o Shivaji Nagar, Gandhi Nagar,
Dharmabad.
- .. Appellants

VERSUS

1. Anandrao s/O Manikrao Pawar,
Age : 82 Years, Occ. Pensioner,
R/o. Dharmabad At Present
R/o. Shiv Vijay Colony, Taroda
Naka, Nanded.
2. Omprakash S/o Ramprasad Sharma,
Age : 76 Years, Occ. Pensioner,
R/o. Dharmabad at present Shastri
Nagar, Nanded.
3. Pandit S/o Yeshwantrao Kale,
Age : 73 Years, Occ. Pensioner,
R/o. Balapur Road, Vidhya Nagar,
Dharabad Tq. Dharamabad,
District Nanded.

4. Baliram G. Varhade,
Age : 77 Years, Occ. Pensioner,
R/o. Dharmabad, at Present
R/o. Plot No. 30, Shri Ganesh Nagar,
Cideco, N-8/D-2, Aurangabad

5. Savitrabai W/o Ganpatrao Kulkarni,
Died through L.Rs..

5-1) Ganpatrao S/o Vitthalrao Golegaonkar,
Age : 83 Years, Occ. Nil,
R/o. Balapur Rad, Dharabad, Taluka
Dharmabad, Dist. Nanded.

5-2) Hemant S/o Ganpatrao Golegaonkar,
Age : 55 Years, Occ. Business,
R/o. Balapur Road, Dharmabad,
Tq. Dharmabad Dist. Nanded.

5-3) Meena W/o Jitesh Bhanap,
Age : 52 Years, Occ. Household,
R/o. Mangalwar Peth, Solapur

5-4) Jaint S/o Ganpatro Golegaonkar,
Age : 51 Years, Occ. Business,
R/o. Balapur Road, Dharmabad,
Tq. Dharmabad Dist. Nanded.

5-5) Parshant S/o Ganpatrao Golegaonkar,
Age : 48 Years, Occ. Business,
R/o. Balapur Road, Dharmabad
Dist. Nanded.

6. Mohd. Ahmed Basit S/o Mohd. Ahmad
Gani, Age : 75 Years, Occ. Agriculture
R/o. Gandhi Nagar, Dharmabad
Tq. Dharmabad, Dist. Nanded.

..Respondents

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Advocate for Appellants : Mr. Shriram Deshmukh h/f
Mr. Nida Tarannum Md Azharuddin
Advocate for Respondent No.2 : Mr. Gaurav L. Deshpande

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CORAM : SANDIPKUMAR C. MORE, J.
DATED : October 03, 2024

ORDER:-

1. Heard rival submissions on admission.
2. The present Second Appeal has been preferred by the appellants i.e. original objection petitioners in Execution Proceeding i.e. R.D. No. 3 of 2021 for challenging the order passed by learned trial Court in the said Regular Darkhast below Exh. 14 and Exh. 26, both dated 20.10.2023. Under the order below Exh. 14, the learned Executing Court had rejected the application of the appellants filed under Order 21 Rule 97 of the Code of Civil Procedure (for short, "CPC") and under order below Exh. 26, the application of the appellants for impleading them as Judgment Debtors under Order 1 Rule 10 of the C.P.C. has been rejected.
3. The learned First Appellate Court i.e. learned Ad-Hoc District Judge-1, Biloli has already dismissed the appeal filed by the appellants on the aforesaid orders.
4. The learned counsel for the appellants vehemently argued that they are the owners of Survey No. 610/1, which was the subject matter of the earlier suit Regular Civil Suit No. 2 of 2010 wherein the then learned trial Judge directed the defendant therein i.e. Mohd. Ahmed Basit S/o Mohd. Ahmed Gani, to hand over the encroached portion which was part of

adjacent survey No. 542. The learned counsel for the appellants vehemently argued that the present appellants were not made party to the said suit even though they were owners of Survey No.610/1. As such, he claimed that the learned trial Court has definitely erred in passing order below Exhibits 14 and 26, by ignoring the ownership of the appellants.

5. On the contrary, the learned counsel for the respondents submits that the earlier suit filed against Mohd. Ahmed Basit was filed for removal of encroachment and possession of the same. According to him, the same suit was contested till this Court and the decree of possession in the said suit has been confirmed up to this Court. According to him, the execution proceeding going on before the learned trial Court is now concluded and the decree passed in the aforesaid suit i.e. Regular Civil Suit No. 2 of 2010 has been satisfied.

6. It is significant to note that though the present appellants were not party to the earlier suit for removal of encroachment, but in the said suit only the encroached portion of adjacent Survey No. 542 was in dispute and no ownership issue in respect of Survey No. 610/1 was involved. Moreover, the decree in the said suit directing the then defendant to hand over the possession remained as it is till

this Court and now it has also been satisfied. Moreover, in the present matter also both the learned Courts below have given concurrent findings against the present appellants. The learned counsel for the appellants tried to argue that the appellants are having ownership right in the land survey No. 610/1 and that is not considered while rejecting the application at Exh. 14. However, the objection raised by the objection petitioner has been rejected by the learned Executing Court by observing that, the alleged ownership would not come in picture, since dispute in the earlier suit for possession was in respect of part of Survey No. 542 only. Even otherwise also, the objection raised by the present appellants under Exh. 14 was apparently vexatious as it was not related to the subject matter of the earlier Regular Civil Suit No. 2 of 2010.

7. The learned counsel for the appellants also raised an objection that under the garb of execution proceeding, the respondents herein have taken possession of 13 R land instead of 4 R land as directed. This submission is clearly denied by the learned counsel for the respondents. Even if it is presumed that 13 R land from Survey No 610/1 was handed over in the execution proceeding, but for that purpose the appellants being the original judgment debtors are having different remedy as per the law. At present it appears that the plaintiffs

in the earlier Regular Civil Suit No. 2 of 2010 have received the possession of the encroached portion as directed under the execution proceeding. Thus, no substance is found in the present Second Appeal and therefore, it stands dismissed at admission stage along with the pending Civil Applications and disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)

Y.S. Kulkarni